IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA	)	
	)	NO. 3:19-cr-00123
v.	)	JUDGE RICHARDSON
	)	
ERIC LYNN GIBBS	)	

ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS

On September 13, 2019, the Court held an evidentiary hearing on Defendant's Motion to Suppress (Doc. No. 25). Prior to and at the hearing, Defendant argued that the police officers violated the Fourth Amendment in their unlawful seizure and search of Defendant's person, and that all evidence seized from Defendant's person as well as statements made incident to the search must be suppressed. The Government argued, *inter alia*, that the officers did not violate the Fourth Amendment in their seizure and search of Defendant's person based on *Terry v. Ohio*, 392 U.S. 1 (1968) and its progeny.

"Encounters between police officers and citizens can be grouped into three categories: 'consensual encounters in which contact is initiated by a police officer without any articulable reason whatsoever and the citizen is briefly asked some questions; a temporary involuntary detention or *Terry* stop which must be predicated upon reasonable suspicion; and arrests which must be based on probable cause.'" *United States v. Campbell*, 486 F.3d 949, 953–54 (6th Cir. 2007) (quoting *United States v. Bueno*, 21 F.3d 120, 123 (6th Cir.1994)).

In *Terry v. Ohio*, the Supreme Court held that an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot. 392 U.S. at 30. While "reasonable suspicion" is a less demanding standard than probable cause and requires a showing considerably less than

preponderance of the evidence, the Fourth Amendment requires at least a minimal level of objective justification for making the stop. *United States v. Sokolow*, 490 U.S. 1, 7 (1989). The officer must be able to articulate more than an "inchoate and unparticularized suspicion or 'hunch'" of criminal activity. *Terry*, 392 U.S. at 27. When determining whether a police officer had reasonable suspicion of criminal activity, the Court must view the totality of the circumstances "as understood by those versed in the field of law enforcement." *United States v. Cortez*, 449 U.S. 411, 418 (1981).

The Government bears the burden of establishing the existence of reasonable suspicion by a preponderance of the evidence. *United States v. Robinson*, No. 1:04-CR-178, 2006 WL 335523, at *1 (E.D. Tenn. Feb. 13, 2006) ("[I]t is the Government's burden to demonstrate by a preponderance of the evidence a particular seizure was based on either probable cause or reasonable suspicion.") (citing *United States v. Baldwin*, 2004 WL 2591245, *6 (6th Cir. Nov.12, 2004)); *United States v. Winfrey*, 915 F.2d 212, 216 (6th Cir. 1990); *United States v. Townsend*, 138 F. Supp. 2d 968, 972-73 (S.D. Ohio 2000), *aff'd*, 305 F.3d 537 (6th Cir. 2002); *Townsend*, 138 F. Supp. 2d at 972-73 ("The Government has the burden of proving by the preponderance of the evidence the existence of a reasonable suspicion, based upon objective and articulable facts, to believe that the Defendants were engaged in criminal activity.") (citing *United States v. Rivas*, 157 F.3d 364, 367 (5th Cir.1998)); *United States v. Shareef*, 100 F.3d 1491, 1500-01 (10th Cir.1996); *United States v. Longmire*, 761 F.2d 411, 417-8 (7th Cir. 1985).

In carrying out a so-called *Terry* stop of a person based on reasonable suspicion, an officer "is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such person[ ] in an attempt to discover weapons which might be used to assault him." *Terry*, 392 U.S. at 30. Such a protective frisk, or pat-down, is compliant with the

Fourth Amendment when the frisking officer "observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous." *Id.* During the course of a protective pat down, if the officer detects nonthreatening contraband or weapons on the individual's person, the evidence is subject to immediate seizure. *United States v. Hudson,* 405 F.3d 425, 431 (6th Cir. 2005) (citing *Minnesota v. Dickerson,* 508 U.S. 366, 373 (1993)).

During the September 13, 2019 evidentiary hearing, the Court found, based on the totality of the circumstances, that the officers' reasonable suspicion that Defendant was involved in criminal activity that may be afoot, and was armed and dangerous, justified their *Terry* stop and pat down.[1] Specifically, the Court found credible pertinent testimony adduced by the Government

[1] That is not to say that the Court found that the Government established reasonable suspicion that Defendant was engaged in the violation of one or more specific criminal statutes; as the Court noted (and confirmed in a colloquy with Government counsel) at the hearing, the Government did not focus on establishing reasonable suspicion as to Defendant's violation of a *particular* criminal statute. But the Government is not required establish this. *See, e.g., United States v. Guardado,* 699 F.3d 1220, 1224 (10th Cir. 2012); *United States v. Pack,* 612 F.3d 341, 356 (5th Cir. 2010); *United States v. Pena-Gonzalez*, 618 F. App'x 195, 198 (5th Cir. 2015) ("[T]he suspicion need not relate to a particular crime; it is sufficient to have reasonable suspicion 'that criminal activity may be afoot.'") (quoting *Pack*, 612 F.3d at 356); *Baker v. Smiscik*, 49 F. Supp. 3d 489, 498 n.6 (E.D. Mich. 2014) ("To justify a temporary detention, an officer need only have reasonable suspicion that 'crime is afoot,' *i.e*. criminal activity in general."); *United States v. Fields*, 2014 WL 5147610, at *4 (W.D. Mo. Sept. 10, 2014), *adopted by*, 2014 WL 5171951 (W.D. Mo. Oct. 14, 2014) ("Officers 'need not be able to identify the specific crime the officer is investigating; rather the officer need only reasonably suspect that the individual is engaged in some kind of criminal activity.'") (quoting *United States v. Noonan*, 2013 WL 500828 at *4 (N.D. Iowa Feb. 11, 2013)); *State v. Perez-Jungo*, 329 P.3d 391, 397-98 (Ida. Ct. App. 2014) ("[R]easonable suspicion does not require a belief that any specific criminal activity is afoot to justify an investigative detention; instead, all that is required is a showing of objective and specific articulable facts giving reason to believe that the individual has been or is about to be involved in some criminal activity."); *Mocek v. City of Albuquerque*, 3 F. Supp. 3d 1002, 1078 (D.N.M. 2014), *aff'd*, 813 F.3d 912 (10th Cir. 2015) ("[T]o establish that reasonable suspicion exists, officers have no obligation to articulate a specific offense which they believe the suspect may have committed"). And the Government here did establish what it needed to, *i.e.*, that reasonable suspicion that criminal activity, namely, prostitution, was afoot and that Defendant was involved in it.

during the hearing, including the officers' testimony that: (1) the officers knew—through the undercover officer—that prostitution or attempted prostitution was occurring in Room 216; (2) Room 216 was registered under Defendant's name; (3) the female had confirmed that a white male who was not the Defendant had been in Room 216; and (4) Defendant was present in the parking lot of the hotel where prostitution or attempted prostitution was occurring in the room registered under his name.

In addition, the Court found that during the September 13, 2019 evidentiary hearing the officers pointed to specific facts sufficient to demonstrate reasonable suspicion that the Defendant was armed and dangerous to justify the *Terry* pat-down of Defendant. Specifically, the Court found credible the officers' testimony that (1) prior to the pat down they were aware of Defendant's prior felon-in-possession of a weapon conviction; (2) they were aware that the Defendant had rented a room in which prostitution or attempted prostitution activity was occurring; and (3) Officer Frost saw a bulge around Defendant's waistline. Accordingly, by a preponderance of the evidence, the Court found that the officers had reasonable suspicion to conclude that Defendant was armed and dangerous to justify their *Terry* pat-down.

After reviewing the briefs, the above-stated standards, and the evidence and argument presented at the evidentiary hearing on September 13, 2019, the Court **DENIES** Defendant's Motion to Suppress (Doc. No. 25) for the reasons stated above and on the record at the evidentiary hearing.

IT IS SO ORDERED.

Eli Richardson

ELI RICHARDSON
UNITED STATES DISTRICT JUDGE